was confirmed A. died, and the suit was revived in the names of his children as his heirs. A. had conveyed a portion of the land to his children in 1882, and in 1887 had executed a deed purporting to convey mineral rights in the same portion to B. B. was not made a party to the suit. The report of partition was confirmed in 1895, and the portion of the property claimed by them was conveyed by commissioner's deed to A.'s children. *Held* that, while B. was a purchaser *pendente lite*, his right to attack the deed under which A.'s children claimed was not affected by the proceedings and decree, as A.'s children succeeded to the suit as heirs, and not as purchasers, and their rights under the deed were not involved therein.

5. The fact that children, to whom land has been conveyed by their father, revive a suit brought by their father, involving the land, in their names as heirs, and not as purchasers, does not estop them to claim under the deed.

6. A decree in partition, entered after everything has been done in the cause except the settling of costs, ascertaining and apportioning the costs, is a final decree; and subsequent proceedings by which a part of the land is sold to pay the costs assessed against it are not binding on a purchaser *pendente lite* who has no notice of such proceedings.

7. In a suit for partition, where no sale is necessary and none is made for the purpose of partition, the court has no jurisdiction to sell the land assigned to one of the parties to satisfy his share of the costs, but such costs are a lien upon the land assigned to him, which must be enforced, like other judgment liens, by bill in equity, as provided by Code 1887, sec. 3571 [Va. Code 1904, p. 1907.]

WORRELL & WILLIAMS v. KINNEAR MF'G CO.

March 9, 1905.

[49 S. E. 988.]

SALES—MANUFACTURED ARTICLES—BREACH OF CONTRACT—DAMAGES—ASCERTAINMENT OF FIXED CHARGES—WITNESSES—CROSS-EXAMINATION—APPEAL—HARMLESS ERROR—FOREIGN CORPORATIONS—PLEADING.

1. The measure of damages for an unqualified annulment without reasonable cause by the vendee in an executory contract for the sale of an article not manufactured at the time of the breach is the difference between the cost of manufacturing and delivering the articles and the contract price.

[ED. NOTE.—For cases in point, see vol. 43, Cent. Dig. Sales, sec. 1106.]

2. The latitude permissible in cross-examining a witness must be left largely to the sound discretion of the trial court, which will not be interfered with unless plainly abused to the prejudice of the party excepting.

[ED. NOTE.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, sec. 3854.]

3. In an action for the breach by the vendee of an executory contract for the sale of articles to be manufactured it was charged by plaintiff that a rival concern was back of the suit, and the vice-president of that concern was actually in court as the chief witness for defendant. Plaintiff's president was asked on

cross-examination, under the guise of showing the "fixed charges" of manufacturing the articles in question, what amount of business plaintiff did, what it spent for advertising, what it spent for salesmen, what were the salaries of its officers, and what was spent for freight. *Held*, that the questions were properly excluded.

4. Plaintiff's president, having testified that the cost of steel under continuing contracts was three cents a pound, was further asked on cross-examination with whom his company had continuing contracts. Defendant's counsel stated that his purpose was to test the credibility of the witness, and that he intended to show that steel could not be bought at that price. In response to a question of the court, he further stated, however, that he could not say that he would attempt to show that the witness did not have any of the contracts testified to. *Held* that, as the only legitimate object of the question would have been to lay a foundation for impeachment, and as counsel disclaimed that purpose, the exclusion of the question was proper.

5. The vendor of material to be used in the manufacture of an article is not a subcontractor within the meaning of the rule excluding supposed advantages of a subcontractor in computing profits in the sale of a manufactured article.

6. Representations that plaintiff's bid for the work was as low as it could be done, and that there was no profit in it at the price bid, are mere expressions of opinion, and, although false, do not invalidate a contract made in pursuance thereof.

7. Rejecting a special defense is not prejudicial to defendant where the evidence in support of such special defense is admitted under the general issue.

8. A specification of a defense in that plaintiff corporation had not complied with the provisions of Code 1904, sec. 1104, prescribing the conditions upon which foreign corporations may do business within the State, was defective where it did not specify the particular in which plaintiff had failed to comply with the statutory requirements.

9. In an action for the breach by the vendee of an executory contract for the sale of articles to be manufactured, defendant could not complain of the ascertainment of plaintiff's "fixed charges" of manufacturing the articles by testimony as to the customary percentage to be deducted for such charges, where he introduced such testimony himself, and the jury returned a verdict for less than the amount of plaintiff's claim as computed by deducting the highest estimate made by defendant's witnesses for fixed charges.

10. A new trial will not be granted for refusal to permit evidence to be introduced, where substantially the same evidence is received without objection at a later stage of the trial.

LEWIS v. APPERSON.

March 9, 1905.

[49 S. E. 978.]

DOWER—RELINQUISHMENT—DEED—ESTOPPEL.

Code 1887, sec. 2502 [Va. Code 1904, p. 1272], provides that, when a husband and wife have signed a writing purporting to convey real estate, it may be recorded, and shall then operate to convey the wife's right of dower. In a suit to